

Foster Care Children Self-Insurance Program

An Agreement Between the Risk Management & Tort Defense Division and the Department of Public Health & Human Services

PREFACE

The basic purpose of the state self-insured foster care program is to recognize the important public function performed by foster parents. Because commercial property and liability insurance typically does not protect foster parents, it is desirable for the Department of Administration to provide this program. It is intended to provide, without a premium expense to the foster parent, a program of protection from the following:

- 1) Damages or losses to property of foster parents caused by the intentional acts of foster children.
- 2) Claims made by third parties against foster parents because of the intentional acts of foster children.

In accordance with 2-9-201, MCA and the Tort Claims Act, the Risk Management and Tort Defense Division will administer this program and evaluate and resolve all claims. The Department of Public Health and Human Services (DPHHS) will remit an agreed upon premium to fund the program, and together with the foster parents will report all claims in an expeditious manner in accordance with the Division's claims administration procedure.

COVERAGE PROVISIONS

- This program is established under authority of 2-9-201, MCA which allows the Department of Administration to provide a comprehensive insurance program for the state. This coverage is applicable for children placed and supervised by DPHHS in a family foster home.
- For purposes of the Tort Claims Act, foster parents are not considered to be independent contractors, and are not state employees. They are not covered under the Tort Claims Act.
- Foster parents will be covered only for damage caused by intentional acts of foster children to their personal and real property.
- This insurance program is secondary to any other coverage the foster parents may have for claimed losses.

LIMITS/DEDUCTIBLES

A. Damage to Property of Foster Care Provided For Intentional Acts of Foster Children.

The lower of the reasonable cost to repair or replace the damaged property.

Deductible per occurrence \$100
(Paid by DPHHS)

***Excess to other available coverage and only for intentional acts of foster children. Foster Parent must first submit the claim to own insurance and make a good faith effort for full recovery before their claim will be considered by RMTD. Proof of such efforts of full recovery must be provided to RMTD.**

B. Liability - Claims made by third parties in accordance with §40-6-327, MCA.

For purposes of §40-6-237, MCA, third parties are entitled to recover damages from the state in an amount not to exceed \$2,500 for a foster child under the age of 18 years, placed and supervised by the Department of Public Health & Human Services living in a state licensed family foster home, who shall maliciously or willfully destroy property, real, personal, or mixed belonging to such third parties.

Per occurrence \$2,500*
Deductible (Paid by DPHHS) \$100

***Excess to other available coverage and only for intentional acts of foster children.**

EXCLUSIONS

- A. Any act or omission arising from actual fraud, willful misconduct, intentional acts or malice or to any claim arising from the commission of a crime by the foster parent(s).
- B. Any act, error, or omission, of a foster parent due to the rendering or failure to render professional services. The care and services rendered in the role of a foster parent shall not be deemed to constitute professional services;
- C. Any act, error, omission, or occurrence directly arising out of an activity as a foster parent;
- D. Liability assumed by a foster parent under any agreement, written or oral, unless expressly approved in advance by the state.
- E. Any obligation for which a foster parent or any carrier as his insurer may be held liable under workers' compensation, unemployment compensation, disability benefits law, or

any similar law.

- F. Cash, coin collections, collectibles, antiques, furs, and jewelry.
- G. Damage caused by normal wear and tear of real or personal property.
- H. Credit cards and/or their misuse.
- I. Mysterious disappearances.
- J. Claims that are not directly related to the actions of the foster child (i.e. the child has a pet that destroys foster parent's property or friend who causes damage).
- K. Claims that reflect a lack of supervision of the child at a level that could reasonably be expected by a foster parent. For example, a very young child who is barely walking pulls himself up into a standing position in a manner that damages the item that was used as a prop, or allowing an unsupervised child to burn leaves near a garage and the garage subsequently burns down.
- L. Charges for unauthorized phone calls.
- M. Firearms.

SUBROGATION

The state will be subrogated to all the foster parents rights of recovery against any person or organization and the foster parents shall do nothing after a loss to prejudice such rights.

DISPUTES

Where a dispute as to the existence or amount of coverage arises, the foster parent shall make application to the Department of Public Health & Human Services and the Risk Management & Tort Defense Division for an administrative hearing to resolve the issue. After hearing the matter and conferring with DPHHS, the Risk Management & Tort Defense Division shall have resolution authority in accordance with the Tort Claims Act 2-9(parts 1-3), MCA.

BUDGETING

The Risk Management & Tort Defense Division will include in its budget rates the premium amount that will be billed each fiscal year of the biennium. The amount will be included in all insurance premium rates for the Department of Public Health & Human Services. The budgeted amount will be based upon a per home basis at a rate established by the Risk Management & Tort Defense Division and agreed to by the Department of Public Health & Human Services. The Department of Public Health & Human Services will provide accurate source data to RMTD

for the number of homes that will be expected to have foster children in them in the upcoming biennium. The budget rates are subject to legislative approval. The Department of Public Health & Human Services is responsible to assure that the budget rates are included in its operational budget. Appropriate amounts will be billed each fiscal year of each biennium.

PAYMENT

Payments, as legislatively appropriate to DPHHS, will be made annually (by September) to the Risk Management & Tort Defense Division, as per the Tort Claims Act. This program will remain in effect as long as is mutually agreeable to the Risk Management & Tort Defense Division and the Department of Public Health & Human Services, and is subject to periodic review and evaluation.

CLAIMS

The Department of Public Health & Human Services will utilize the claims procedures as outlined in the Risk Management Procedures Manual (also found on the division's website).

EXECUTION OF AGREEMENT

It is hereby agreed between the Risk Management & Tort Defense Division of the Department of Administration and the Department of Public Health & Human Services that the provisions of this agreement will remain in force until further notice. This contract may be modified as necessary by the Department of Administration as agreeable to the Department of Public Health & Human Services.

This agreement is effective September 1, 2001

SIGNATURES

Chuck Hunter, Division Administrator, Foster Care Program

Date

Brett Dahl, Administrator, Risk Management & Tort Defense Division

Date

